

House Bill 610  
March 21, 2013  
Presented by Becky Dockter  
House Agriculture Committee

Mr. Chairman and committee members, I am Becky Dockter, Chief Legal Counsel of the Montana Department of Fish, Wildlife and Parks (FWP). I am here today on behalf of the Director in opposition to House Bill 610, because it creates a level of unnecessary confusion, classifies wildlife as livestock, and will lead to more litigation as individuals, organizations, and agencies try to interpret it.

HB 610 is much like Representative Harris' HB 507 that was tabled in this committee. HB 610 still retains many of the problems HB 507 contained.

HB 610 still treats a native wildlife species in Montana as livestock. The only bison that would be considered wildlife under HB 610 would be those on lands contiguous to Yellowstone National Park (YNP) in the Hebgen and Gardiner Basins that can be allowed there only if they are on habitat that can accommodate the migration of bison.

HB 610, in creating this new category of livestock for wild bison that are outside of the contiguous Yellowstone area, would require the Department of Livestock (DOL) to apply all laws and regulations on this wildlife species. Every law and regulation with regard to estrays, moving livestock, health certificates, stolen livestock, etc., would apply to any wild bison outside of Yellowstone and its immediate vicinity. This new characterization for bison is troublesome, but the reality is that the characterization doesn't so much matter as long as the agency in charge has clear duties on how to manage those bison. What HB 610 really does is confuse the jurisdictions of two agencies and alter the current management laws; a situation that is almost sure to result in litigation. The irony is that current management is working and has been upheld in court.

In addition, the definition of "bison" in Section 11, page 12, poses the problem of defining every bison that is managed at all as livestock if they have been "reduced to captivity" and "owned by a person." If they don't have both of these characteristics, they cannot be wild bison according to HB 610. There are many circumstances where FWP and DOL handle bison, including capturing them in the Stephens Creek facility for testing, for quarantine or holding them to avoid public safety issues. In those circumstances, even if those bison would be otherwise considered wild under this bill, it would turn them into livestock because they would have been "reduced to captivity." This is problematic because then we'd have bison immediately adjacent to YNP that could be considered livestock or wild depending on whether they were captured even for a short time.

Another problem retained in HB 610, is that DOL's disease management authority for bison directly outside of YNP is removed. In section 2 on page 2, where DOL's management authority before the proposed amendments of HB 507 and now HB 610 was applied to those areas immediately outside of YNP, HB 610 again excludes DOL disease management authority on

lands immediately outside of YNP. Department of Livestock currently applies various methods for management of bison that migrate out of Yellowstone when they pose a disease threat to livestock just outside the Park. Those methods range from physically removing bison through hazing, to destroying them. HB 610 takes that authority away on those lands immediately adjacent to YNP. FWP and DOL are currently involved in an appeal of a decision where those landowners near YNP challenged the agencies as not having done enough to manage bison outside of YNP. This HB 610 removes the authority of DOL altogether.

In addition, HB 610 again requires FWP to manage bison as livestock if the public desires to transplant bison outside of YNP. Even on tribal lands, FWP would be required, should bison be transplanted outside of those immediate YNP areas, to manage bison as livestock. This is troublesome both because FWP has no management authority over tribal lands and also because FWP has no authority for livestock management. The reality of HB 610 is that it will squelch any attempt by FWP to transplant bison to tribal entities because of the confusion this would create for managing bison outside of YNP. HB 610 would make translocation so confusing that it would likely never occur without litigation.

Finally, HB 610 seemingly attempts to fix a perceived problem for management of bison that has not been given the chance to prove it can work under current law. SB 212, passed last session and now the current law at Mont. Code §87-1-216, already sets up a process for management of bison outside of YNP that retains their characterization as wildlife. It requires the agency to develop a management plan and a public process before transplanting bison outside of the immediate YNP area. In addition, the IBMP partners have developed adaptive management measures that are beginning to work well. This year, because of the IBMP partners' designation of habitat outside of the park where bison can be more readily hunted, state and tribal hunters took 248 bison; the most that has ever been taken through hunting. This, to the wildlife managers, is confirmation that the process has been working. FWP understands that there are still challenges to overcome. FWP and DOL have a track record of working tirelessly to overcome those challenges together. HB 610 takes away authority from both FWP and DOL and thus, erodes any flexibility for the agencies to work together in the way they've proven they can to improve bison management.

In summary, because HB 610 creates a level of confusion and complexity that far surpasses any help that it might lend, and because with any confusion and complexity comes further litigation on an issue that has already proven ripe for litigation, FWP respectfully requests a Do Not Pass on HB 610.